Filed 2/25/19 Chiquita Canyon, LLC v. Superior Court CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHIQUITA CANYON, LLC, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; COUNTY OF LOS ANGELES et al., Real Parties in Interest.	B292655 (Los Angeles County Super. Ct. No. BS171262)

ORIGINAL PROCEEDINGS in mandate. Mary H. Strobel, Judge. Petition granted.

Beveridge & Diamond, Gary J. Smith, Jacob P. Duginski, James B. Slaughter, Gus B. Bauman, and Megan L. Morgan, for Petitioner.

No appearance for Respondent.

Office of the County Counsel, Mary C. Wickham, County Counsel, Elaine M. Lemke, Assistant County Counsel, Dusan Pavlovic, Senior Deputy County Counsel, for Real Parties in Interest.

Generally, an applicant for a government-issued permit must litigate an administrative mandamus challenge to the conditions upon which such a permit is granted before commencing the permitted activity. Prior cases, including *Lynch v. California Coastal Com.* (2017) 3 Cal.5th 470 (*Lynch*), have held that failure to litigate in advance operates as a forfeiture of the permit holder's right to contest the conditions imposed. We consider whether this forfeiture principle (which Real Party in Interest Los Angeles County (the County) dubs the *Pfeiffer-McDougal* rule[1]) can be invoked in a mandamus action filed by petitioner Chiquita Canyon, LLC (Chiquita) that challenges various conditions imposed in a conditional use permit authorizing continued operation of the Chiquita Canyon Landfill (Landfill). Specifically, we decide whether Chiquita's allegation that the County should be estopped from invoking this forfeiture rule fails as a matter of law.

I. BACKGROUND

The Landfill, located in Castaic, provides waste management, recycling, and disposal services. It is the second largest landfill in Los Angeles County and provides nearly one-quarter of the County's solid waste management needs. The Landfill was approved for waste disposal in 1967 and has been in use as a landfill since 1972. Beginning in 1977, the County issued conditional use permits (CUPs) to companies, ultimately

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[1] The appellation derives from two of the seminal cases in this area: *County of Imperial v. McDougal* (1977) 19 Cal.3d 505 and *Pfeiffer v. City of La Mesa* (1977) 69 Cal.App.3d 74.

including Chiquita, to operate the Landfill. CUPs for the Landfill reissued in 1982 and 1997.

In 2004, Chiquita applied for a new CUP well in advance of the point at which the 1997 CUP was to expire; the application sought authorization to continue Landfill operations, which would entail some expansion of waste disposal on contiguous property at the current site. Some twelve years later, the permit application had not yet been resolved and the Landfill reached the maximum tonnage permitted under the terms of the 1997 CUP. Chiquita requested, and the County granted, a "clean hands waiver" to permit Chiquita to operate the Landfill uninterrupted through July 2017, which would allow for resolution of the ongoing permit approval process.

During the administrative permit review process before the County's Planning Commission, Chiquita objected to various proposed CUP conditions and fees. When the Planning Commission recommended approval of the CUP notwithstanding Chiquita's objections, Chiquita appealed to the County Board of Supervisors, reprising its objections to conditions and fees. In July 2017, the Board approved, over Chiquita's objections, a new CUP that imposed 139 conditions, including approximately $300,000,000 in fees and other costs (the 2017 CUP).

Days after the Board's approval, Chiquita recorded an affidavit of acceptance as required by Condition No. 5 in the 2017 CUP,[2] but the affidavit declared Chiquita was reserving its rights

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[2] Condition No. 5 states: "This grant shall not be effective for any purpose until the permittee, and the owner of the subject property (if other than the permittee), have filed at the office of the Department of Regional Planning their affidavit stating that they are aware of and agree to accept all of the conditions of this

to challenge one or more of the 2017 CUP conditions in a court of law.[3] Chiquita also filed a copy of the recorded affidavit with the County.

According to Chiquita, upon the filing of its affidavit, an official in the County's Department of Regional Planning advised by email that the language Chiquita had added to the affidavit purportedly invalidated it. The Department of Regional Planning directed Chiquita to record the affidavit without alterations and to set forth Chiquita's reservation of rights in a separate letter—adding, in a separate conversation with a Chiquita representative, that the County would pursue a notice of violation and permit revocation proceedings if the amended affidavit was not filed by August 3, 2017.

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grant, and that the conditions of this grant have been recorded . . . and until all required monies have been paid . . . . Notwithstanding the foregoing, this Condition No. 5 . . . shall be effective immediately upon the Approval Date of this grant by the County. The filing of the affidavit . . . constitutes a waiver of the permittee's right to challenge any provision of this grant."

[3] The affidavit stated it was "filed for the limited purpose of effectuating the [2017 CUP] pursuant to Condition No. 5, so as to avoid a temporary shut-down of the ongoing operation of Chiquita Canyon Landfill. As of the Effective Date, Chiquita Canyon Landfill will operate in compliance with the Conditions of Approval. Notwithstanding the preceding statement or any other statement in this affidavit, the filing of this affidavit does not constitute a waiver of forfeiture of permittee's legal rights to challenge any of the Conditions of Approval in a court of law, and all such rights are expressly reserved."

On that date, Chiquita recorded an amended affidavit of acceptance as directed by the County, and separately confirmed its reservation of rights in an August 4, 2017, email and August 23, 2017, letter to the County. Again according to Chiquita, the County did not contemporaneously contest the effectiveness of this reservation. The County recognized July 28, 2017, as the effective date of the 2017 CUP.

Approximately two months later, Chiquita filed a verified petition for writ of mandate and complaint against the County and its Board of Supervisors. Thereafter, Chiquita filed a first amended verified petition for writ of mandate and complaint (the operative petition). Chiquita's operative petition challenges 29 of the conditions and fees included in the 2017 CUP.

The County demurred to two of the causes of action in the operative petition (alleging infringement on free speech rights under the California and United States Constitutions) and moved to strike portions of the operative petition. In both the demurrer and motion to strike, the County argued Chiquita forfeited its right to challenge 13 use-related CUP conditions[4] by "specifically

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[4] The County used the term "use-related" to differentiate conditions governing operation of the Landfill from conditions that impose a fee or some other type of exaction. The following are the 13 "use-related" or "operational" conditions identified by the County in its demurrer and motion to strike: daily, monthly, and annual waste disposal tonnage limitation (Condition No. 23); enclosure of composting facility (Condition No. 28); final landfill elevation limitation (Condition No. 29); review of the permit every five years during the 30-year grant (Condition No. 37); termination of the landfill operations (Condition Nos. 38-39); operating hours (Condition No. 40); waste origin tracking (Condition No. 42); prohibition on use of nine different waste

agreeing to them" and accepting the benefits of the 2017 CUP. The County pointed to Chiquita's last-recorded affidavit of acceptance and argued Chiquita executed the affidavit "without any reservations, while continuing to operate its landfill pursuant to the [2017] CUP."

In a consolidated opposition, Chiquita emphasized it had alleged in the operative petition that it explicitly reserved its right to challenge the 13 use-related conditions in writing, separate and apart from the affidavit, at the County's direction. Therefore, Chiquita argued, the County should be estopped from arguing Chiquita had forfeited its rights to challenge the use-related conditions of the 2017 CUP. Moreover, Chiquita asserted, the authority on which the County relied to assert Chiquita forfeited the right to challenge the operational conditions did not apply in case of a permit that authorized the continued and substantively unchanged use of a property, particularly where that use provided at least a quasi-public good.

The trial court held a hearing on the County's demurrer and motion to strike and granted both. The court's ruling did not address Chiquita's argument that the County should be estopped from arguing it had forfeited the right to challenge the operational conditions of the 2017 CUP. But as to the merits of the forfeiture issue, the court concluded it was bound by the holding in *Lynch*, *supra,* 3 Cal.5th 470 because "[a]t present,

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material for alternate daily cover (Condition No. 43(D)); regulation of acceptance of out-of-area waste (Condition No. 43(G)); prohibition on acceptance of certain types of waste (Condition No. 48); video monitoring (Condition No. 109); and a requirement that Chiquita continue working with industry stakeholders to support certain waste-related legislative goals (Condition No. 126).

there does not appear to be any explicit or implicit exception to the *Pfeiffer-McDougal* rule where the permit involves continued operations, or where the cessation of those operations would have a potentially adverse effect on the public." The court recognized that the practical implications of its rationale—requiring a major landfill operator to shut down operations while challenging permit conditions—could be "quite severe," but the court believed the result was compelled by precedent and noted it had "teed [the issue] up pretty well to be reviewable" if Chiquita wanted to "take a writ."

Chiquita, of course, did later file a petition for writ of mandate in this court, challenging the court's ruling on the demurrer and motion to strike. We issued an order to show cause, believing extraordinary review was appropriate in light of the issues presented and the impact of the trial court's ruling, which "effectively deprived [Chiquita] of the opportunity to present a substantial portion of [its case]." (*Brandt v. Superior Court* (1985) 37 Cal.3d 813, 816.)

II. DISCUSSION

We shall reverse the trial court's orders on the County's demurrer and motion to strike because Chiquita's equitable estoppel contention does not fail as a matter of law. While courts should entertain estoppel theories advanced against local governments only in limited circumstances, Chiquita has pled facts here that, if taken as true (which we do at this stage of the proceedings), would justify application of estoppel principles. As Chiquita tells it, the County directed Chiquita to reserve its rights in a particular manner and then contested the reservation's effectiveness, which deprived Chiquita of the

opportunity to make the hard choice of whether to comply with the 2017 CUP permit as issued or cease operating the Landfill while its challenge to certain conditions was heard in court.

A. Standard of Review

We review de novo whether a demurrer is properly sustained and whether a motion to strike is properly granted. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415 [demurrer]; *Washington Internat. Ins. Co. v. Superior Court* (1998) 62 Cal.App.4th 981, 984, fn. 2 [motion to strike].) For purposes of our review, "we assume that the complaint's properly pleaded material allegations are true and give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context. [Citations.] We do not, however, assume the truth of contentions, deductions, or conclusions of fact or law. [Citation.]" (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125; see also *Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 53 ["A motion to strike, like a demurrer, challenges the legal sufficiency of the complaint's allegations, which are assumed to be true"].)

B. Chiquita Has Adequately Pled Estoppel in the Operative Petition and Complaint

"'Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be [*sic*] acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.' [Citations.]"

(*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1359.) Estoppel is generally a factual question for the trier of fact to decide, unless the facts are undisputed and can support only one reasonable conclusion as a matter of law. (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1263.) "Since we must accept as true facts that are properly pleaded, and must consider those facts of which judicial notice may be taken [citation], these facts are undisputed." (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 843.)

The general grounds for applying the doctrine of equitable estoppel, however, apply on a more limited basis when the estoppel is invoked against a government entity. That is, "[i]n *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497[ ], our Supreme Court held that '[t]he government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present *and*, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.' [Citation.] However, an estoppel will not be applied against the government where it will 'effectively nullify "a strong rule of policy, adopted for the benefit of the public, . . ." [Citation.]' [Citation.]" (*County of Sonoma v. Rex* (1991) 231 Cal.App.3d 1289, 1295, italics added.)

Chiquita first recorded and filed an affidavit of acceptance with language indicating it was reserving its rights to challenge one or more of the 2017 CUP's conditions in a court of law. As alleged in the operative petition, that same day the County directed Chiquita to record an affidavit without the reservation of

rights language and to instead set forth that reservation in a separate letter. Chiquita did as it was told, and Chiquita further alleged the County did not contest the effectiveness of reserving its rights in this manner.

We cannot say, at the pleading stage, that these allegations are insufficient to make out a claim for equitable estoppel against the County. On the facts alleged, the County was apprised of the pertinent facts (and the relevant law too), i.e., that it would deem ineffective a reservation of rights undertaken in the manner in which it allegedly insisted. The County certainly intended Chiquita to comply with its directions, and Chiquita has sufficiently alleged it was ignorant of the true state of facts, i.e., that its reservation of rights would be deemed ineffective. The operative petition's allegations also suffice to establish Chiquita relied on the County's representations to its injury—instead of being put to the hard choice of whether to pursue its challenges to the 2017 CUP while shuttering operations, Chiquita unknowingly forfeited (at least as found by the trial court) its challenges by continuing to process County-wide waste at the Landfill rather than shutting down operations while its legal challenges were heard. Under the circumstances, and with further development of the facts as alleged, a court sitting in equity could reasonably find the injustice which would result from a failure to estop the County from arguing forfeiture is weighty enough to justify any effect upon public interest or policy which would result from enforcing the estoppel.[5] (See, e.g., *HPT*

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[5] *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172 is not to the contrary. That case held the City of Malibu could not agree with a developer to refrain from enacting zoning or other ordinances that would restrict construction of

IHG-2 Properties Trust v. City of Anaheim (2015) 243 Cal.App.4th 188, 201-206 [municipality equitably estopped from changing site plan approved in conditional use permit after the plaintiffs were induced by the municipality's representations to spend $40 million and cede property to the defendants to develop the contemplated project] (*Anaheim*); *Ocean Services Corp. v. Ventura Port Dist.* (1993) 15 Cal.App.4th 1762, 1775-1776 [government entity estopped from asserting claim against it was untimely because on the basis of correspondence and "verbal assurances" to the contrary provided to the claimant]; see also *Anaheim*, *supra*, at p. 206 [""[E]stoppel can be invoked in the land use context in only 'the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow""].)

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residential units shown on a subdivision map. (*Id.* at p. 181.) The Court of Appeal's rationale was that a government entity cannot, consistent with public policy, contract away its right to exercise its police powers in the future. (*Id.* at pp. 182-183.) The County argues it had no authority to permit Chiquita to contest certain 2017 CUP conditions while continuing Landfill operations, but whether that is true or not, it is not the basis of the estoppel. The estoppel arises because the County led Chiquita to believe it would not forfeit its ability to bring a legal challenge when the County later argued precisely such a forfeiture. There is no dispute, in this case, that Chiquita would have been entitled to maintain its challenge to the 2017 CUP conditions had it halted Landfill operations.

DISPOSITION

Let a peremptory writ of mandate issue directing the respondent court to vacate its July 17, 2018, orders sustaining the demurrer and granting the motion to strike and to issue new orders overruling the demurrer and denying the motion to strike. The stay imposed by this court is lifted. Chiquita is to recover its costs in this proceeding.

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BAKER, J.

We concur:

RUBIN, P. J.

KIM, J.